

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

V.

THE BOEING CO., a Delaware Corporation, the LOCKHEED MARTIN CORPORATION, a Maryland Corporation, and the CITY OF MOSES LAKE, a municipal corporation of the State of Washington,

## Defendants.

Civil Action No.  
**CV-10-457-LRS**  
COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Secretary of the United States Army, alleges as follows:

## NATURE OF THE ACTION

1. This is a civil action for recovery of costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act

1 (“CERCLA”), 42 U.S.C. § 9607. The United States seeks to recover the  
 2 unreimbursed costs it has incurred in connection with the release and threatened  
 3 release of hazardous substances into the environment at the Moses Lake Wellfield  
 4 Superfund Site (the “Site”) near Moses Lake, Washington.

5 JURISDICTION AND VENUE

6 2. This Court has jurisdiction over the subject matter of this action, and  
 7 the defendant, pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113  
 8 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

9 3. Venue is proper in this District under Section and 113(b) of  
 10 CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims  
 11 arose, and the threatened and actual releases of hazardous substances occurred,  
 12 within this judicial district.

13 DEFENDANTS

14 4. Defendant City of Moses Lake, Washington (the “City”) is the current  
 15 owner and operator of portions of the Site within the meaning of Section 107(a)(1)  
 16 of CERCLA, 42 U.S.C. § 9607(a)(1), and owned and operated the wastewater  
 17 treatment system on the Site at the time of disposal of hazardous substances at the  
 18 Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2)

19 5. Defendant The Boeing Company (“Boeing”) is the current owner of  
 20 portions of the Site within the meaning of Section 107(a)(1) of CERCLA, 42  
 21 U.S.C. § 9607(a)(1), and owned and operated certain facilities on the Site at the  
 22 time of disposal of hazardous substances at the Site, within the meaning of Section  
 23 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2)

24 6. Defendant Lockheed Martin Corporation (“Lockheed”) owned and  
 25 operated the certain facilities on the Site at the time of disposal of hazardous  
 26 substances at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42  
 27 U.S.C. § 9607(a)(2).

1           7.     The Defendants are “persons” within the meaning of Section 101(21)  
2 of CERCLA, 42 U.S.C. § 9601(21).

## STATUTORY FRAMEWORK

4           8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

5 (1) the owner or operator of a vessel or a facility,

6 (2) any person who at the time of disposal of any hazardous substance  
7 owned or operated any facility at which such hazardous substances  
were disposed of, . . .

8 || shall be liable for --

9 (A) all costs of removal or remedial action incurred by the  
10 United States Government . . . not inconsistent with the  
national contingency plan. . . .

## GENERAL ALLEGATIONS

12       9.     The Moses Lake Site occupies approximately 15 square miles in  
13 Grant County, Washington and is situated approximately three miles northwest of  
14 the City of Moses Lake, Washington.

15 10. The Moses Lake Site is a “facility” within the meaning of Section  
16 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. Between 1942 and 1966, a substantial portion of the Moses Lake Site  
was used as the former Larson Air force base (“LAFB”). During this period of  
time, Defendants Boeing and Lockheed conducted substantial operations at the  
Site.

12. Boeing's operations between 1942 and 1964 included, but were not limited to, flight testing and delivery to the United States Air Force of B-52 aircraft, refurbishment of KC-135 aircraft, and operation and facilities to support those programs.

13. Lockheed's predecessor-in-interest was the prime contractor for the  
14. Titan I missile program at Larson Air Force Base. Facilities involved in that

1 program included a liquid oxygen generating (“LOX”) plant and a missile  
2 assembly and maintenance shop (“MAMS”).

3       14. In or about 1968, Boeing purchased approximately 120 acres of  
4 property on the Site, which includes a 3-place hangar and other facilities. Boeing  
5 continues to own that facility and had conducted various activities at the Site since  
6 1968.

7       15. On information and belief, the activities conducted by Boeing and  
8 Lockheed at the Site included the use and disposal of trichloroethylene (“TCE”)  
9 and/or chemicals containing TCE.

10      16. The City owns property within the Site, including a drinking water  
11 system and a sewage treatment plant within the Site. The City acquired both of  
12 these facilities from the Air Force by quit claim deed on June 1, 1967, and has  
13 operated these facilities up to the present day. The sanitary sewage treatment plant  
14 has collected, and collects, contaminated water from a variety of sources within  
15 the Site. On information and belief, the treatment plant may have been a source of  
16 TCE releases at the Site.

17      17. During 1988 and 1989, the State of Washington’s Department of  
18 Ecology (“Ecology”) and the Washington State Department of Social and Health  
19 Services (“DSHS”) sampled the Moses Lake Site well systems including the  
20 Skyline Water System. In addition, in 1990 Ecology and Environment (“E&E”),  
21 an EPA contractor completed a preliminary investigation for U.S. EPA.

22      18. EPA and the United States Army Corps of Engineers (“Corps”) have  
23 undertaken response actions at the Site, including, but not limited to, a Remedial  
24 Investigation/Feasibility Study (“RI/FS”).

25      19. Ecology and DSHS sampling, the E&E investigation, and the RI/FS  
26 demonstrated that as a result of waste disposal, practices, the groundwater was  
27  
28

1 contaminated with "hazardous substances" as that term is defined in Section  
 2 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3 20. Hazardous substances, including TCE, were found in the groundwater  
 4 at the Moses Lake Site.

5 21. Hazardous substances, including TCE, have been found in samples of  
 6 the soils within the Site.

7 22. There were and are "releases" within the meaning of Section 101(22)  
 8 of CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases, of  
 9 hazardous substances into the environment at and from the Site.

10 **CLAIM FOR RELIEF**  
 11 (Claim for Recovery of Response Costs)

12 23. The allegations of the foregoing paragraphs are incorporated herein  
 13 by reference.

14 24. The releases or threatened releases of hazardous substances at the  
 15 Moses Lake Site have caused the United States to incur response costs as defined  
 16 by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a),  
 17 in connection with the Site.

18 25. The costs of the response actions taken by the United States in  
 19 connection with the Site are not inconsistent with the National Contingency Plan,  
 20 40 C.F.R. Part 300.

21 26. As of August xx, 2005, EPA and the United States Army Corps have  
 22 incurred response costs for the Site in excess of \$18,000,000.

23 27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
 24 Defendants are jointly and severally liable to the United States for the response  
 25 costs incurred by the United States in connection with the Site.

26 28. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),  
 27 Defendants are liable for a "declaratory judgment on liability for response costs . .

1 . that will be binding on any subsequent action or actions to recover further  
 2 response costs."

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, the United States of America, respectfully requests  
 5 that the Court:

6 1. Award the United States a judgment against Defendants, for all costs  
 7 incurred by the United States through August xx, 2005, in connection with the  
 8 Moses Lake Wellfield Superfund Site, plus interest;

9 2. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),  
 10 enter a "declaratory judgment on liability for response costs . . . that will be  
 11 binding on any subsequent action or actions to recover further response costs."

12 3. Grant such other and further relief as this Court deems appropriate.

13 Respectfully submitted,

14 IGNACIA S. MORENO  
 15 Assistant Attorney General  
 Environment and Natural Resources  
 16 Division

17 /s Michael J. Zevenbergen  
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24 Attorneys for United States of America

25 Dated: December 23, 2010

26  
 27  
 28 U. S. DEPARTMENT OF JUSTICE  
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## Certificate of Service

Pursuant to Fed. R. Civ. 5(d), I certify that on December 23, 2010, I caused true and correct copies of the UNITED STATES' COMPLAINT to be served, in the manner specified below, on:

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